



**State of New Hampshire**  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2982



Torromeo Trucking Co., Inc.  
33 Old Ferry Road  
PO Box 2308  
Methuen, MA 01844

RE: Mason's Corner Subdivision

**ADMINISTRATIVE ORDER**

No. WD 02-10

March 4, 2002

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Torromeo Trucking Co., Inc., pursuant to RSA 485-A:22 and RSA 482-A:6.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH.
2. Torromeo Trucking Co., Inc. ("Torromeo") is a Massachusetts corporation having a principal place of business at 33 Old Ferry Road, Methuen, MA 01844. Torromeo's mailing address is P.O. Box 2308, Methuen, MA 01844.

**C. STATEMENT OF FACTS AND LAW**

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
2. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any surface waters of the state. Pursuant to RSA 482-A:11, I DES has adopted Wt 100 *et seq.* to implement this program.
3. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
4. Env-Ws 415.02(y) defines "to significantly alter the characteristics of terrain" to include

disturbing more than 100,000 sq.ft. of contiguous area.

5. Env-Ws 415.09(i) and (k) require temporary and permanent methods for preventing soil erosion and controlling runoff to be employed during earth moving activities.

6. Env-Ws 415.09(j) requires construction phasing and sequencing to be implemented during earth moving activities, including methods for limiting the length of time unstabilized soils are exposed.

7. Torromeo is the owner of property located off North Road in Fremont, New Hampshire, more particularly identified on Town of Fremont Tax Map 6 as Lot 62 (the "Property").

8. On November 7, 2000, DES personnel conducted an inspection of the Property, and reviewed documents on file with DES. As a result of the field inspection and review of DES files, the following has been documented:

a) Site Specific Permit WPF-4594 (the "Site Specific Permit") was issued to the previous owner of the Property, Harold Sherman, for development of a 97-acre parcel into a 27-lot residential subdivision, known as Mason's Corner Subdivision.

b) The Site Specific Permit expired on May 3, 1998

c) On January 3, 1997, DES issued wetlands permit number 1996-0220 (the "Wetlands Permit") to Harold Sherman for roadway crossings and one driveway crossing for a 27-lot subdivision.

d) The Wetlands Permit was not transferred to Torromeo from Mr. Sherman, and expired on January 3, 1999.

e) Culverts were not constructed with proper headwalls, as required by the Wetlands Permit. Inadequate culverts include those at the following approximate locations: stations 13 + 00, 32 + 00, and 47 + 00 on Karlin Road.

f) Proper erosion/siltation control measures were not in place or had not been maintained on unstabilized areas of the Property, as required by the Site Specific Permit.

g) Permanent stormwater drainage systems were not stabilized prior to paving of road surfaces and prior to directing flow to the drainage systems, as required by the Site Specific Permit.

h) The slope between stations 10 + 00 and 11 + 00 on Karlin Road had not been stabilized as required by the Site Specific Permit. The silt fence between stations 10 + 00 and 11 + 00 had failed.

i) The culvert at station 34 + 00 was half filled with sediment

j) Approximately 800 sq. ft. of fill was observed in the wetlands between stations 40 + 00 and 44 + 00 on Karlin Road.

k) The roadside ditches between stations 44 + 00 and 47 + 00 were not stable for the full length of the ditches.

9. A Letter of Deficiency WD WQE 00-21 ("LOD") was issued to Henry Torromeo on December 11, 2000. The LOD requested that Torromeo complete the following:

- a) Transfer the Wetlands Permit within 10 days of the LOD.
- b) Submit a Site Specific application within 30 days of the LOD.
- c) Install a silt fence at the edge of the forested wetland on Lot 62-12-23 (property of Richard Washburn) to prevent further sedimentation from the eroding slope to enter wetlands. Place mulch on the slope immediately to stabilize. In spring, the slope should be backdragged, seeded and mulched.
- d) Mulch the slopes at the intersection of Karlin Road and Round Robin Loop, and install silt fence at the toe of the slope within 10 days of the LOD.
- e) Install proper headwalls at the inlets and outlets of all culverts on the Property within 20 days of the LOD.
- f) Install silt fence around the stockpile of material at the cul-de-sac on Round Robin Loop within 10 days of the LOD.
- g) Place mulch on the slope between stations 10 + 00 and 11 + 00 on Karlin Road to stabilize it within 10 days of the LOD. Seed and mulch slope in the spring. Install silt fence at the toe of slope.
- h) Remove sediment from the culvert at station 34 + 00 on Karlin Road within 10 days of the LOD.
- i) Remove silt fence in the wetlands between stations 40 + 00 and 44 + 00 on Karlin Road.
- j) Place mulch on roadside ditches between stations 44 + 00 and 47 + 00 on Karlin Road to stabilize within 10 days of the LOD. Seed and mulch in the spring.

11. On February 13, 2001, DES personnel spoke with Vincent Iacozzi of Torromeo regarding deficiencies noted on the LOD. Mr. Iacozzi stated that the deficiencies had been corrected with the exception of the issue on Lot 62-12-23, which he stated had been caused by actions of the property owner, Mr. Washburn. Mr. Iacozzi further stated that "as-built" plans would be submitted to the Site Specific program by their engineers within a 2 week time frame.

12. On May 10, 2001, DES personnel inspected the Property and determined that Torromeo had not complied with any of the items requested in the LOD, except that the stockpile of material at the cul-de-sac on Round Robin Loop (item f) had been removed.

13. On September 20, 2001, DES personnel inspected the Property and found that Torromeo still had not complied with any of the items requested in the LOD, with the exception of item (f), and

that sediment had migrated from unstabilized areas on Round Robin Loop and the intersection of Karlin Road onto the road surface.

#### **D. DETERMINATION OF VIOLATIONS**

1. Torromeo has violated NH RSA 485-A:17 by significantly altering terrain without a permit from DES.
2. Torromeo has violated NH RSA 485-A:17 and Env Ws 415.09(i) by failing to install or maintain erosion control measures on Karlin Road between stations 10 + 00 and 11 + 00, adjacent to the culvert at station 34 + 00, and between stations 44 + 00 and 47 + 00.
3. Torromeo has violated RSA 485-A:17 and Env Ws 415.09(j) by failing to stabilize exposed soils.
4. Torromeo has violated NH RSA 482-A:3, I, by failing to construct proper headwalls on three (3) culverts on the Property.
5. Torromeo has violated NH RSA 482-A:3, I, by placing fill, i.e., a silt fence, in wetlands without a permit from DES.
6. Torromeo has violated NH RSA 482-A:3, I, by placing less than 3,000 square feet of fill in wetlands without a permit from DES.

#### **E. ORDER**

Based on the above findings, DES hereby orders Torromeo as follows:

1. Immediately stabilize all areas adjacent to the roads of the Mason's Corner Subdivision.
2. Within 10 days of the date of this Order, prepare an erosion and sediment control plan ("Plan") for the Property, and submit the Plan to DES for review. The Plan shall include a schedule for implementing the measures described in the Plan.
3. Implement the Plan, as approved by DES, in accordance with the approved schedule.
4. Within 30 days of the date of this Order, submit an application for a Site Specific Permit to DES. The application shall be prepared by an engineer licensed in the State of New Hampshire, and in accordance with Env-Ws 415.05.
5. Within 30 days of the date of this Order, submit an application for a Wetlands Permit to DES.
6. Within 30 days of the date of this Order, submit a wetlands restoration plan to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration or mitigation of the wetland and surface waters impacted by activities at the Property. The following shall be submitted with the restoration plan:
  - a. A plan with dimensions, drawn to scale, showing:
    - i. existing conditions on the sites, with wetland boundaries and land topography; and

- ii. proposed conditions after reestablishing the jurisdictional areas
  - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
  - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration and/or mitigation areas;
  - d. A description of the proposed construction sequence, equipment methods for accomplishing restoration and anticipated restoration compliance date.
  - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include, at a minimum, monitoring progress reports for two successive growing seasons following completion of the restoration project.
7. Retain a certified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with item E.6 above, and to submit the restoration progress reports.
8. Implement the restoration plan proposed in accordance with item E.6 above only after receiving written approval and as conditioned by DES.

Submit the completed Site Specific and Wetlands permit applications, wetlands restoration plan, and erosion and sediment control plans to:

Rene J. Pelletier, Manager  
DES Water Division, Land Resources Management Program  
6 Hazen Drive - P.O. Box 95  
Concord, NH 03302-0095

## **F. APPEAL**

Any person aggrieved by determination D.1, 2, or 3 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Torromeo Trucking Co., Inc. of the obligation to comply with the Order.

Any person aggrieved by determination D.4, 5 or 6 of this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing if, in its opinion, good cause is demonstrated by the request. Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

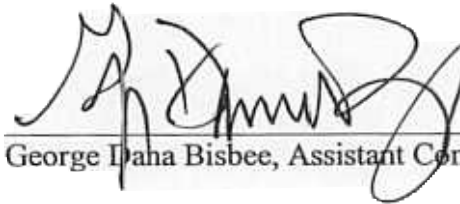
## **G. OTHER PROVISIONS**

Please note that RSA 485-A:22 and RSA 482-A provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Torromeo Industries, Inc. remains obligated to comply with all applicable requirements, in particular installation of sufficient sediment and erosion controls to prohibit sediment from leaving the Property. DES will continue to monitor Torromeo's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director  
Water Division



George Dana Bisbee, Assistant Commissioner

**CERTIFIED MAIL #**

cc: Gretchen Rule, DES Legal Unit  
Charles Knox, DES PIP Office  
Mary Ann Tilton, WET/WD/DES  
Ana Ford, WQ/WD/DES  
Rockingham County Registry of Deeds  
Fremont Planning Board  
Fremont Conservation Commission